CHIN CHEN FUI

v.

MAJLIS PERBANDARAN SANDAKAN & ANOR.

HIGH COURT SABAH & SARAWAK, SANDAKAN
TUAN IAN H. C. CHIN J
[SUIT NO S. 164 OF 1985]
2 FEBRUARY 1995

***CONTRACT**: Contract of employment - Termination of employment - Claim for damages for breach of contract - Whether there was a written agreement by which the plaintiff was employed by the first defendant - Whether the plaintiff was appointed by the Minister concerned pursuant to clause 8 of the Sandakan Municipal Council Instrument 1983 - Whether such appointment was illegal because the plaintiff was not at the relevant time a member of the State Public Service - Whether s. 105 of the Local Government Ordinance required the plaintiff to be a member of the State Public Service.*

***CONTRACT**: Fixed term contract - Whether contract of employment was subject to Regulation 37(2) of the Staff Regulations for Local Authorities 1964 - Whether fixed term contract can be terminated by paying one month's salary in lieu of notice.*

The plaintiff claimed damages against the Sandakan Municipal Council (the Council) for breach of a two-year contract employing the plaintiff as Vice-President (I) of the Council, which employment took effect from 22 January 1985 but which the Council terminated prematurely on 17 May 1985.

The questions that arose for decision were:

(1) whether the letters dated 17 January 1985, 18 January 1985, and 1 February 1985 constituted an agreement by which the plaintiff was employed by the Council;

(2) whether the plaintiff was appointed to the post of Vice-President (I) by the Minister concerned pursuant to clause 8 of the Sandakan Municipal Council Instrument 1983 (the Instrument);

(3) whether, if the plaintiff was appointed to the post pursuant to clause 8, the appointment was illegal because the plaintiff was not at the relevant time a member of the State Public Service;

(4) whether, if the plaintiff was employed under a contract by the Council, the contract was illegal because the plaintiff was not at the relevant time a member of the State Public Service as required by s. 105 of the Local Government Ordinance (the Ordinance) and whether s. 105 of the said Ordinance requires the plaintiff to be a member of the State Public Service; and

(5) whether the contract of employment was subject to Regulation 37(2) of the Staff Regulations for Local Authorities Sabah 1964 which provides for the termination of an employment by, among other methods, paying one month's salary in lieu of notice.

Held:

[1] At the close of the case for the plaintiff, the defendant electing not to call any evidence, what has been established is that the plaintiff was a member of the State Public Service, was employed with the approval of the Minister concerned, had undertaken tasks not only for the Council but for seven other local authorities as well and was paid his February, March,

April and May 1985 salaries and allowances by the Council. There being no illegality apparent on the face of the contract of employment, the evidence adduced by the plaintiff establishes that the plaintiff was employed by the Council.

[2] There is no express provision in either the Instrument or the Ordinance that prohibits the appointment or the contract of employment of the plaintiff. Far from prohibiting a contract that is entered into without complying with the Instrument or the Ordinance, such a contract is expressly saved by s. 37(3) of the Ordinance. In the circumstances it could not even be implied that the appointment or contract of employment was prohibited by the Instrument or the Ordinance.

[3] Under s. 69 of the Ordinance the Council could employ the plaintiff since the work that the plaintiff was employed to undertake came within the numerous functions defined in s. 49 of the Ordinance. Given that the Council could enter into the contract either under s. 37 or s. 69 of the Ordinance, it is not permissible to imply in the instrument a clause prohibiting the contract when there is no express provision.

[4] Since the appointment or contract for the Vice-President (I)'s post can validly be made under either ss. 37 or 69 of the Ordinance or even under Regulation 1 of the Staff Regulations for Local Authority Staff, none of which requires the plaintiff to be a member of the State Public Service, the contract employing the plaintiff is not tainted with any illegality since it was not prohibited by statute.

[5] The Staff Regulations for Local Authorities Sabah 1964, Regulation 1(3) provides that the Minister concerned can approve an appointment on terms other than those set out in the said Regulations. In the circumstances the Council's contention, that the contract was governed by Regulation 37(2) which allows the termination of the contract with one month's notice, must necessarily fail. The Council also therefore fails in its argument that damages are limited to one month's salary. Since there was no argument that the calculation of the damages argued by Counsel for the plaintiff cannot be supported, those figures are deemed to be conceded.

[6] The plaintiff is to recover costs against the Council on the basis of a Bullock Order. A Bullock Order is made because the Council had at one stage of the pleading alleged that the Minister concerned, and therefore the Government, was responsible for hiring and firing the plaintiff. That being the stance of the Council, it was not unreasonable for the plaintiff to have applied, obtained an order and thereafter joined the Government as a defendant.

[Plaintiff's claim against first defendant allowed with costs. Plaintiff's claim against second defendant dismissed with costs]

Cases referred to:

Majlis Peguam Malaysia & 3 Ors. v. Joseph Au Kong Weng [1993] 1 AMR 26 ***(refd)***
PP v. Tan Kah Pin [1993] 1 CLJ 83 ***(refd)***
Tan Sung Mooi v. Too Miew Kim [1994] 3 AMR 35 ***(refd)***
R. v. Mansell Jones [1889] 23 QBD 29 ***(refd)***
Chor Phaik Har v. Farlim Properties Sdn. Bhd. [1994] 3 AMR 41 ***(refd)***
Mohamed Noor bin Othman & Ors. v. Haji Mohamed Ismail [1988] 3 MLJ 82 ***(refd)***
Smith Kline & French Laboratories Ltd. v. Salim (Malaysia) Sdn. Bhd. [1989] 2 MLJ 380 ***(refd)***
Coramas Sdn Bhd v. Rakyat First Mechant Bankers Bhd & Anor [1992] 2 MLJ 603; [1992] 1 AMR 44 ***(refd)***
Chung Kiaw Bank Ltd v. Hotel Rasa Sayang Sdn. Bhd. & Anor. [1990] 1 MLJ 356 ***(dist)***
A. R. Wright & Son Ltd. v. Romford Borough Council [1957] 1 QB 431 ***(cit)***

Legislation referred to:
Staff Regulations for Local Authorities Sabah 1964, r. 37(2)
Local Government Ordinance 1961, s. 3, 8, 37(3), 69,
Public Authorities Protection Ordinance (Cap. 111) of Sabah, s. 2(1)
Companies Act, 1965, s. 67
Corporate Bodies' Contract Act 1960 (UK)
Contracts Act 1950, s. 10(2)

For the plaintiff - Jeyan Marimuttu; M/s Teo Marimuttu & Partners
For the first defendant - John Sikayun; M/s. Luping & Co.
For the second defendant - Juprin Wong-Adamal; State Attorney-General's Chambers

JUDGMENT

Ian H. C. Chin J:

Introduction

On 14 June 1985, Chin Chen Fui ("the plaintiff") took out the writ herein against the Sandakan Municipal Council ("the Council") claiming damages for breach of a two-year contract employing the plaintiff as Vice-President (I) of the Council which took effect from 22 January 1985 but which the Council terminated prematurely on 17 May 1985. The Council had on 29 July 1985 applied to strike out the claim but the application was dismissed and the appeal against which decision was in turn dismissed by the Supreme Court on 6 April 1987. On 1 December 1987, the plaintiff obtained summary judgment but this judgment was set aside by the Supreme Court on 10 June 1988. The parties had, by taking out their unsuccessful applications, delayed this case by four years. Despite that, no urgency was shown in setting this action down for trial What followed is a history checkered with inaction and it was not till 18 September 1993, which is more than 5 years after the Supreme Court had set aside the summary judgment, that this action was entered for trial after the Government of the State of Sabah ("the Government") was, upon the application of the plaintiff, ordered to be added as a defendant and thus became the 2nd defendant in this suit pursuant to an order made on 26 March 1991. It was also by that order that the Council was supposed to deliver their amended defence by 25 April 1991 but this was not done until 3 December 1994. The Court had in the meantime by a notice dated 21 October 1994 fixed this case for trial on 20 December 1994. The late delivery by the Council of the amended defence prompted the plaintiff to apply to strike it out and this application was heard and dismissed on 20 December 1994. The trial then immediately proceeded that morning. Though the parties had, at the hearing of the summons for directions, estimated that the trial will last 5 1/2 days with 15 witnesses to be called, the trial ended that morning with five witnesses called and all gave almost entirely insignificant testimony. The facts are not disputed. The contention revolves around the legal consequences arising from the undisputed facts. I will now proceed to set out the facts of this case.

Facts of Case

The Sabah State Civil Service Commission on 1 October 1983 approved the appointment of the plaintiff as an architect on a contract for three years. This appointment was gazetted on 15 March 1984. The then Chief Minister of Sabah, by a minute dated 23 September 1983, instructed the State Secretary to appoint the plaintiff as the President of the Labuan Municipal Council with effect from 1 October 1983. The State Secretary then wrote to the Permanent Secretary of the Ministry of Town and Country Development on 28 September 1983 which resulted in the appointment of the plaintiff as the President of the Labuan Municipal Council

for a period of "6 to 12 months in the 1st instance" effective from 1 October 1983, as directed by the then Chief Minister. This appointment only came to an end on 15 December 1984 after Labuan became a Federal Territory and after it was terminated by the Ministry of Federal Territories. The plaintiff thereafter met the Chief Minister on 17 January 1985 and asked to be appointed "Timbalan President (I) (Special Functions/Development/Public Relation)" ("Vice-President (1)"). The terms discussed that morning with the Chief Minister were reduced into writing in the form of a letter from the plaintiff to the Chief Minister which the Chief Minister accepted and his assent was signified by noting on the said letter the following Bahasa Malaysia words addressed to the Acting State Secretary: "Di-persetujui, sila uruskan" (translated to mean, "agreed, please arrange"). This letter of the plaintiff reads:

17 January 1985

YAB Datuk Ketua Menteri
Kota Kinabalu

Datuk,

Appointment

With reference to our discussion this morning, I hereby respectfully submit herewith my proposed terms and conditions of appointment for your consideration and approval please:

(a) Designation and Tenure of appointment:	Timbalan Presiden (I) (Special Functions/ Development/Public Relation) for 2 years w.e.f 22 January 1985
(b) Term of appointment:	Contract with Sandakan Municipal Council upon my intention to terminate my substantive appointment as Akitek in KPB & D.
(c) Salary:	RM6,000 per month with an annual increment of 13%
(d) Entertainment allowance:	RM500 per month.
(e) Housing:	To be provided by Sandakan Municipal Council.
(f) E.P.F. Contribution:	Employee - 10% Employer - 15%
(g) Gratuity:	17 1/2% of final basic salary.
(h) Personal accident insurance	RM500 per annum
(i) Medical benefits:	Free at all government hospitals except costs for denture and spectacles.
(j) Vehicle:	Volvo 264 to be provided by Sandakan Municipal Council with a driver.
(k) Leave:	30 days per annum.
(l) Regional Allowance:	12 1/2 % of basic salary.
(m) Other benefit:	One amah.

Saya yang menurut perintah,
(signed)
(Chin Chen Fui)

What ensued was a letter dated 18 January 1985 from the State Secretary to the Permanent Secretary of the Ministry of Town and Country Development forwarding the Chief Minister endorsed plaintiff's said letter and asking him to consider, decide and act on the proposed appointment; the relevant part of this letter reads:

... 18 January 1985

Perlantikan Sebagai Timbalan Presiden I
Majlis Perbandaran Sandakan
(Encik Chin Chen Fui)

Adalah saya diarah untuk mengemukakan surat yang diterima daripada Encik Chin Chen Fui bertarikh 17 Januari 1985 yang membawa pengertiannya sendiri, dan yang mana telah dialamatkan kepada YAB Datuk Ketua Menteri berhubung dengan perkara di atas.

2. Jawatan yang dicadangkan oleh penama dalam permohonan yang telah dipersetujui oleh YAB Datuk Ketua Menteri menerusi "footnote" dalam muka (2) surat berkenaan, nampaknya adalah merupakan satu jawatan di bawah bidangkuasa Kementerian tuan. Memandangkan demikian, maka perkara ini adalah dikemukakan kepada pihak tuan untuk pertimbangan, keputusan dan tindakan selanjutnya.

....

Almost two weeks later, on 1 February 1985, the said Permanent Secretary issued the following letter to the President of the Council, *viz*.:

1 Februari, 1985

Presiden,
Majlis Perbandaran,
Sandakan

Perlantikan Encik Chin Chen Fui Sebagai Timbalan Presiden (I) di Majlis Perbandaran, Sandakan

Salinan JKNVC/202/13, 923/30 bertarikh 18 Januari 1985 dikemukakan bersama dengan ini untuk perhatian dan tindakan pihak tuan selanjutnya.

2. YB Datuk Menteri Pembangunan Bandar dan Desa telah meluluskan:

(i) Pengwujudan jawatan Timbalan Presiden (1) (Special Functions/Development/Public Relation) di Majlis Perbandaran Sandakan secara kontrak untuk tempuh dua tahun (khas untuk penyandang) mulai dari 22 Januari 1985;

(ii) Perlantikan Encik Chin Chen Fui ke jawatan ini mengikut syarat-syarat yang telah dipersetujui oleh YAB Datuk Ketua Menteri.

Sekian, maklum dan terimakasih.

(Signed)

(David Lee Thau Phin)
b.p. Setiausaha Tetap,
Kementerian Pembangunan Bandar dan Desa

to inform the President of the Council that the Minister concerned had approved the appointment of the plaintiff as Vice-President (1) upon the terms which the Chief Minister had agreed. The plaintiff had already, on 22 January 1985, assumed his post. On 5 March 1985, the Ministry of Town and Country Development followed up with a letter to the plaintiff informing the plaintiff that the government had appointed him to study and review the administration and financial management of eight local authorities. The plaintiff then proceeded to carry out his tasks. The Council rented a house for the plaintiff in accordance with the terms set out in the said letter of 17 January 1985. For unknown reasons, the appointment to study and review was terminated by way of a one paragraph letter dated 6 May 1985 from the Council to the plaintiff and it says:

Dimajukan bersama-sama ini salinan surat KPB&D 511/768/81 bertarikh 26 April 1985 yang membatalkan perlantikan tuan untuk mengaji dan mengkaji semula pentadbiran dan pengurusan kewangan Kuasa-kuasa Tempatan, antara lainnya Majlis Perbandaran Sandakan.

Along with this letter was forwarded a copy of a letter of the Permanent Secretary of the Ministry of Town and Country Development dated 26 April 1985 which was addressed to the President of the Council and which, among others, informed the President that the appointment of the plaintiff was thenceforth withdrawn. The relevant part of this letter reads:

...

Perlantikan Encik Chin Chen Fui etc...

Adalah saya diarah merujuk surat bil: SMC/EST/298/5 bertarikh 12 Mac 1985 mengenai dengan perkara tersebut di atas dan memaklumkan bahawa perlantikan penama tersebut di atas dan surat bil KPBD C101/14/131 bertarikh 5 Mac 1985 adalah ditarik balik dengan serta merta

...

The Permanent Secretary of the Ministry of Town and Country Development also issued a letter dated 6 May 1985 to the plaintiff to "withdraw" his appointment to study and review the administration and financial management of the local authorities. On the same day too, this secretary wrote to the President of the Council to say:

...

Saya diarah merujuk kepada surat saya bil. KPB&D.511/768/78 bertarikh l Februari 1985 mengenai dengan perkara tersebut di atas dan memaklumkan bahawa perlantikan Encik Chin Chen Fui ke jawatan sebagai Timbalan Presiden, Majlis Perbandaran Sandakan hendaklah ditamatkan tanpa pernberian notis. Di dalam hal ini beliau hendaklah diberi sebulan gaji sebagai ganti notis

2. Surat saya bil. KPB & D.511/768 bertarikh 26 April 1985 adalah dengan ini dibatalkan.

...

This letter contains instructions to the President of the Council to terminate the appointment of the plaintiff as Vice-President (1) and to pay one month's salary in lieu of notice. A copy of this was sent to the plaintiff by the President of the Council together with his memo dated 7 May 1985 by which the plaintiff was asked to quit the house rented by the Council for the plaintiff. The plaintiff was not only terminated as to his appointment but salt was rubbed into his wound as well when his resignation from the State Public Service as an architect, which was only to take effect if he was to hold the post of Vice-President (1), was belatedly accepted by the Civil Service Commission by a letter dated 26 May 1985. It is however not established as to when the plaintiff tendered his resignation and neither was the letter, if there was any, produced as evidence. Presumably, his letter of 17 January 1985 was regarded as a letter tendering his resignation. On 3 June 1985, the plaintiff through his solicitors rejected and repaid the one month salary in lieu of notice he received. It appears from the Council's "Staff's Earning Record Card" that the plaintiff was paid by the Council his salaries and other dues for the months of February, March, April and May, 1985. The plaintiff thereafter tried but failed to secure a job to mitigate his losses. Those were all the relevant facts that can be gleaned from the undisputed documents in this case. Though five witnesses were called by the plaintiff, they were, I am of the opinion, unnecessarily called because their evidence amounted to no more than mere recital of what was very well documented in the undisputed documents. But evidence was led that at all relevant time a Stephen Chin was already appointed the Vice-President of the Council. No evidence was led

as to why the plaintiff's employment was terminated. It was upon those evidence that I have just related that the plaintiff closed his case while the defence elected not to call any evidence.

Whether Prima Facie Case

Thus, at the close of the case for the plaintiff, what has been established is that the plaintiff was a member of the State Public Service, was employed with the approval of the Minister concerned from 22 January 1985 as a Vice-President (1), had undertaken tasks not only for the Council but for seven other local authorities as well and was paid his February, March, April and May 1985 salaries and allowances by the Council which details were recorded in the "'Staff's Earnings Record Card". He was also provided by the Council with a house, a driver, an amah and a car. His appointment was terminated abruptly before the expiry of the two years period for which the employment was supposed to endure. With these evidence, I am of the view that they at least establish that the plaintiff was employed by the Council. The burden therefore shifts to the Council to establish their allegations that are set out in their defence. There is no mention in any of the evidence that the appointment was questionable. Witnesses who had put their signatures to documents relating to the appointment and who gave evidence did not state nor were they asked to state the circumstances under which the plaintiff was appointed and what prompted the termination. There is no illegality apparent on the face of the contract of employment. I will deal first with the case of the plaintiff against the Council and will only thereafter advert to the case of the plaintiff against the Government. There is dispute as what the issues are. My immediate task therefore, is to determine from the pleadings what the issues are in this case. The statement of claim of the plaintiff reads:

Indorsement of Claim

1. By an Agreement in writing dated the 17 January 1985 and as contained in correspondence as particularised below ("the said Agreement"), the plaintiff was appointed with the approval of the 2nd defendants and was employed by the defendant and was employed as Timbalan President I of the Majlis Perbandaran Sandakan (Sandakan Municipal Council) for a term of two (2) years from the 22 January 1985.

Particulars of Correspondence

(i) Letter dated 18 January 1985, from the Chief Minister's Department to the Permanent Secretary of the Ministry of Town and Country Development (Ref: JKM/C202/13923/300 stating, *inter alia*, that the plaintiff's appointment as Timbalan Presiden I of the Majlis Perbandaran Sandakan has been approved by the YAB Chief Minister

(ii) Letter dated 1 February, 1985, from the Ministry of Town and Country to the Presiden of Majlis Perbandaran Sandakan (KPB & D 511/768/78) stating that the YB Minister has approved the creation of the post of Timbalan Presiden 1 (Special Functions/Development/Public Relations) in the Majlis Perbandaran Sandakan and approved the plaintiff's appointment to the said post for a term of two (2) years with effect from 22 January 1985, on the terms and conditions as agreed by the YAB Chief Minister.

2. By a letter dated 5 March 1985 from the Ministry of Town and Country Development (KPD & D.C 101/14/13 1) to the plaintiff, the 2nd defendants further appointed the plaintiff to study and review the administration and financial management of eight local authorities (called "the letter of appointment to study and review").

3. In consideration of such service as aforesaid by the plaintiff the defendants agreed to pay and provide the following:

(i) Salary of RM6,000 per month with an annual increment of 13%;
(ii) Thirty (30) days paid leave per annum;
(iii) Employee's Provident Fund contribution of 15% of the salary by the defendants;
(iv) Entertainment allowance of RM500 per month;
(v) housing accommodation;
(vi) gratuity of 17 1/2% of final basic salary;
(vii) personal accident insurance of RM500 per annum;
(viii) medical benefits;
(ix) a car (Volvo 264) together with a driver,
(x) regional allowance of 12 1/2% of basic salary, and
(xi) one amah (servant).

4. From 22 January 1985 the plaintiff had in accordance with the said agreement carried out his duties as the Timbalan Presiden I of the Sandakan Municipal Council.

5. From 5 March 1985 the plaintiff had in accordance with the letter of appointment to study and review carried out his duties.

6. By letters as particularised below, the 1st and 2nd defendants wrongfully and in breach of the said agreement terminated the plaintiff's employment as Timbalan Presiden I with immediate effect from 22 May 1985 and the plaintiff's appointment to study and review the existing administration and financial management of the local authorities was withdrawn.

(i) Letter dated 26 April 1985 from the Ministry of Town and Country Development (Ref: KPB&D 511/768/81) to the 1st defendants stating that the plaintiff's appointment as Timbalan President I is to be withdrawn with immediate effect.

(ii) Letter dated 6 May 1985 from the Ministry of Town and Country Development (MLGC. 101/14/133) to the plaintiff stating that the plaintiff's appointment to study and review the existing administration and management of the local authorities is withdrawn.

(iii) Letter dated 6 May 1985 from the 1st defendants to the plaintiff stating that the plaintiff's appointment to review the administration and management of the financial position of the local authorities is withdrawn.

(iv) Letter dated 6 May 1985 from the Ministry of Town and Country Development (MLG 511/768/82) to the 2nd defendants that the plaintiff's appointment as Timbalan Presiden of the Majlis Perbandaran Sandakan is to be terminated without giving prior notice.

(v) Memorandum in writing dated 17 May 1985 from the President of the Majlis Perbandaran Sandakan (Ref. SMC/EDT/299/13) to the plaintiff stating, *inter alia*, that the plaintiff's appointment as Timbalan Presiden I of the Majlis Perbandaran Sandakan has been terminated.

7. By reason of the matters aforesaid the plaintiff has been unable to obtain a similar situation elsewhere and has suffered loss and damage.

Particulars

(i) Loss of salary from 22 May 1985 to 1 January 1987 ("the said period"):		
(a) 22 May 1985 to 21 January 1986 (at RM6,000 per month)	RM48,000	
(b) 22 January 1986 to 21 January 1987 (agreed annual increment of 13% of RM6,000 per month i.e. RM6,780 per month)	RM81,360	RM129,300
(ii) Loss of Employee's Provident Fund Contribution from the defendant for the said period		
(a) 22 May 1995 to 21 January 1986 (15% of RM7,250 per month. Basic salary RM6,000 + Regional Allowance RM750 + Entertainment Allowance RM500 = RM7,250)	RM8,700	
(b) May, 1985 to 21 January, 1986 (15% of RM8,128 per month. Basic salary RM6,780 + Regional Allowance RM848 + Entertainment Allowance RM500 = RM8,128)	RM14,630	23,330
(iii) Loss of entertainment allowance for the said period at RM500 per month:		10,000
(iv) Loss of housing a accommodation for the said period (valued at RM1,300 per month at the time of dismissal):		26,000
(v) Loss of gratuity (agreed to be at 17 1/2% of final basic salary):		
(a) 17 1/2% x (RM6,000 x 12)	RM12,600	
(b) 17 1/2% x (RM6,780 x 12)	RM14,238	26,838
(vi) Loss of personal accident insurance at RM500 per annum:		500
(vii) Loss of use of car (Volvo 264) together with a driver for the said period estimated at RM2,000 per week for 78 weeks;		156,000
(vii) Loss of regional allowance for the said period at 12 1/2% of basic salary:		
(a) 22 May 1985 to 21 January, 1986 (at salary of RM6,000 per month)	6,000	
(b) 22 January, 1986 to 21 January 1987 (at salary of RM6,780 per month)	10,170	16,170
(ix) Loss of service of one amah (servant) for the said period at the rate of RM250 per month (as at the time of dismissal);		5,000
		RM393,198

The plaintiff will give credit herein for deduction of tax in respect of the said salary the plaintiff would otherwise have received in the employment of the defendants.

a And the plaintiff claims:

(1) Against the 1st and 2nd defendants jointly:
(i) The sum of RM393,198;
(ii) Damages for breach of the said agreement;
(iii) Discretionary interest pursuant to s. 11 of the Civil Law Act from 22 May 1985 to the date of judgment;
b (iv) Statutory interest at the rate of 8% per annum from the date of judgment till realisation;
(v) Costs.
(vi) Other relief

(2) Against the 1st defendants

(i) The sum of RM393,198;
(ii) Damages for breach of the said agreement;
c (iii) Discretionary interest pursuant to s. 11 of the Civil Law Act from 22 May 1985 to the date of judgment;
(iv) Statutory interest at the rate of 8% per annum from the date of judgment till realisation;
(v) Costs.
(vi) Other relief

(3) Against the 2nd defendants

d
(i) The sum of RM393,198;
(ii) Damages for breach of the said agreement;
(iii) Discretionary interest pursuant to s. 11 of the Civil Law Act from 22 May 1985 to the date of judgment;
(iv) Statutory interest at the rate of 8% per annum from the date of judgment till realisation,
(v) costs.
e (vi) Other relief

The Council's re-amended defence reads:

Re-Amended Defence

1. Paragraph 1 of the amended indorsement of claim is denied. The 1st defendant did not enter into any agreement to employ the plaintiff as alleged or at all.

f 2. The plaintiff was appointed to the post of Timbalan President I of the defendants by the Minister of Town and Country Development *vide* his letter of 1 February 1985 to the 1st defendants.

3. The appointment of the plaintiff referred to in paragraph 2 above was made by the Minister pursuant to Clause 8 of the Sandakan Council Instrument (Instrument No. 13 of 1983 as amended).

g 4. Clause 8 of the instrument reads as follows

> The President who shall be the Chairman of the Council, and the Vice-President shall be appointed by the Minister for such period being longer than one year as he may determine and such persons shall be members of the state public service.

5. At all material times, the plaintiff was not a member of the state public service

h 6. In the premises the 1st defendants will say that the plaintiff's appointment to the post of Timbalan President I with the 1st defendants was null and void *ab initio*, having been made in contravention of Clause 8 of the instrument, and such agreement that the plaintiff may have with the 1st defendants, with respect to his services as Timbalan President I, if any, which is denied, is illegal and unenforceable against the 1st defendants by reason of s. 24(a) and s. 25 read with s. 2(g) of the Contracts Act 1950.

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7. If which is denied, this Court were to hold that an agreement did subsist between the plaintiff and the 1st defendants as alleged under paragraph 1 of the amended indorsement of claim, the defendants will say that such agreement is likewise illegal and unenforceable by reason of the matters stated under paragraph 5 hereof in that s. 105 of the Local Government Ordinance 1961 provides that all employees of the defendants shall be members of the public service.

8. Save in that the plaintiff was appointed by the Minister of Town and Country Development to the post of Timbalan President I in the 1st defendants on the terms and conditions set out therein, no admission is made as to paragraph 2 of the statement of claim.

9. No admission is made as to paragraph 3 of the amended indorsement of claim.

10. No admission is made as to paragraph 4 and 5 of the amended indorsement of claim. Paragraph 4 of the amended indorsement of claim is denied.

11. The appointment of the plaintiff to the post of Timbalan President I in the 1st defendants was revoked by the Minister of Town and Country Development *vide* a letter dated 26 April 1985 to the 1st defendants and by two letters dated 6 May from the Ministry of Local Government and Housing to the defendants.

12. In the premises, the 1st defendants will say that such agreement that the plaintiff may have had with the 1st defendants with respect to his service as Timbalan President 1, if any, which is denied, was frustrated, the performance of such agreement having become impossible by reason of the matters stated under paragraph 11 hereof, and that the 1st defendants are discharged from further performance of such agreement, if any, with the plaintiff under s. 57(2) of the Contracts Act 1950.

13. Further, if which is denied, this Court were to hold that an agreement did subsist between the plaintiff and the 1st defendants as alleged under paragraph 1 of the amended indorsement of claim, the 1st defendants will say that the appointment of the plaintiff to the post of Timbalan President I was governed by the provisions of the staff regulations for Local Authorities Sabah 1964, and that the 1st defendants were entitled to and did terminate the plaintiffs employ with themselves by their letter of 17 May 1985 to the plaintiff in accordance with the provisions of clause 37(2) of the said regulations.

14. If which is denied, this Court were to hold that the 1st defendants are liable to the plaintiff in damages, the 1st defendants will say that the quantum of such damages is limited to one month's salary which the 1st defendants would have had to pay the plaintiff by reason of Clause 37(2) of the Staff Regulations for Local Authorities Sabah 1964.

15. Paragraph 7 of the amended indorsement of claim is denied and the plaintiff is put to strict proof of his claim of loss and for damages.

16. Save as in hereinbefore expressly admitted the 1st defendants deny each and every allegation of the amended indorsement of claim as if the same were herein set out *seriatim* and specifically traversed.

The plaintiff did not amend his reply which was delivered in 1987 and had by the said reply joined issues with the Council but added that though the power of appointment lies with the Minister concerned, the plaintiff was employed by the Council to serve as Vice-President (1), that the contract was not frustrated and that the plaintiff will rely on s 37(3) of the Local Government Ordinance, 1961. Apart from the issue of frustration which the pleadings disclose, but which the Council abandoned, the other issues, in my view, are:

(1) whether the said letters dated 17 January 1985, 18 January 1985, and 1 February 1985 (which I have set out earlier) constituted an agreement by which the plaintiff was employed by the Council (see para. 1 of the indorsement of claim and para 1 of defence);

(2) whether the plaintiff was appointed to the post of Timbalan President I by the Minister concerned pursuant to clause 8 of the Sandakan Municipal Council Instrument, 1983 (see para. 2 and 3 of the defence);

(3) whether, if the plaintiff was appointed to the post of Timbalan President I by the Minister pursuant to clause 8 of the Sandakan Municipal Council Instrument, 1983, the appointment was illegal because the plaintiff was not at the relevant time a member of the State Public Service (see para. 4, 5 and 6 of the defence);

(4) whether, if the plaintiff was employed under a contract by the Council, the contract was illegal because the plaintiff was not at the relevant time a member of the State Public Service as required by s. 105 of the Local Government Ordinance and whether s. 105 of the Local Government Ordinance requires the plaintiff to be a member of the State Public Service (see para. 7 of the defence); and

(5) whether the contract of employment was subject to Regulation 37(2) of the Staff Regulations for Local Authorities Sabah 1964 which provide for the termination of an employment by, among other methods, paying one month's salary in lieu of notice (para. 13 and 14 of the defence).

It is trite law that where illegality is alleged the issue can still be considered notwithstanding that it is not pleaded. Therefore, apart from that raised in the pleadings, the Council is also permitted to argue the issue of illegality based on grounds other than stated in their defence. I have already stated that the evidence *prima facie* show the plaintiff to have been employed by the Council. Therefore issue (1) has already been determined. Issues (2), (3) and (4) are inter-related as they pertain to the question of illegality. They will therefore be considered together..

Illegality

The relevant legislation will now be considered in relation to the issue of illegality. The Council was established pursuant to s. 3 of the Local Government Ordinance, 1961 (Sabah) ("'the Ordinance") by the publication in the Gazette of the Sandakan Municipal Council Instrument, 1983, ("the Instrument"). The then relevant provisions of the Instrument are:

6. The Council shall be composed of the Vice-President and not more than twenty-two members who shall be appointed by the Minister.

7. All appointed members shall be appointed for a period of one year.

8. The President who shall be the Chairman of the Council, and the Vice-President shall be appointed by the Minister for such period being longer than one year as he may determine and such persons shall be members of the State Public Service.

There are other provisions of the Instrument and these empowered the Council to perform the actions specified in the various sections of the Ordinance. As for the Ordinance, it provides for the Instrument to be "read and construed as one with this Ordinance and shall be of the same and effect as if it were enacted in this Ordinance: Provided that in the event of any conflict between the provisions of any Instrument and the provisions of this Ordinance, the provisions of this Ordinance shall prevail." (s. 5(2)). The Instrument can only be amended by the Yang di-Pertua Negeri by an amending Instrument under s. 8 of the Ordinance.

Mr. John Sikayun submitted that the provisions just referred to have the effect of rendering the appointment of the plaintiff illegal because there was already an appointed Vice-President in the person of Stephen Chin and because the plaintiff was, at the relevant time, not a member of the state public service. Mr. Jeyan Marimuttu, learned Counsel for the plaintiff, apart from saying that there is no evidence of illegality, maintained that the appointment of two Vice-Presidents are permissible and referred to s 69.(2) of the Ordinance which says:

> 69.(2) Every Authority may employ either on a whole or partime basis such other officers, servants, labourers and other workers as may be required for the performance of its functions under this Ordinance. No appointment carrying a salary of more than such amount per month as the Minister may direct in respect of such Authority or on a scale which rises above such amount shall be made nor shall any person draw such salary without the approval of such Minister and appointments to and dismissals from such posts shall be subject to the approval of the Minister. For the purposes of this subsection "salary,' shall include allowances and "appointment' shall include an acting or temporary appointment,

and the Council's Staff Regulations for Local Authority Staff, clause 1, which says:

> 1. (1) Subject to paragraph (3) and (4) these staff regulations apply to any person who is, on or after 1 May 1964, appointed by a Local Authority to a post on its staff in one of the following categories:
>
> Executive Officer, Special Grade, or Executive Officer Urban Inspector, Special Grade, or Urban Inspector Building Inspector or Assistant Building Inspector Health Inspector, Special Grade, or Health Inspector Market Inspector Clerk, Special Grade, Clerk or Clerical Assistant Overseer, Grade I and II Rural Health Nurse Messenger or Process Server
>
> or to any other category of post of similar or higher grade approved by the Minister (e.g. Treasurer, Assistant Executive Officer).
>
> (2) ...
>
> (3) In special cases the Minister may approve the appointment of a person to one of the categories of posts mentioned in paragraph (1) on terms other than those set out in these staff regulations,

and learned Counsel submitted that the contract of employment was not tainted with any illegality because it is within the power of the Minister concerned to approve the appointment. Though the said learned Counsel conceded that the plaintiff was not a member of the State Public Service but he argued that the plaintiff was deemed to be one by virtue of s. 105 of the Ordinance which says:

> 105. Certain persons to be deemed to be in the public service
>
> For the purposes of any written law, any person in the employment of any Authority or any chairman or member of an Authority in respect of his duties as such shall be a person employed in the public service.

Mr. John Sikayun argued otherwise and maintained that this section has the effect of making a contract that employs a person who is not a member of the State Public Service illegal because, according to learned Counsel, the section should be read as stipulating that a person can only be employed by the Council if the person is a member of the State Public Service. Mr. Jeyan Marimuttu argued, as was said earlier, that the section has the effect of making the plaintiff, after his employment by the Council, a member of the State Public Service though in fact he was not one. The question, therefore, is, whether upon a construction of the words of that section, they have the meanings which both learned Counsel put forward. In my view, it is a matter of the interpretation of the relevant legislation. All the Court has to do is

to ascertain the meaning of the legislation as it stands (*Majlis Peguam Malaysia & 3 Ors v Joseph Au Kong Weng* [1993] 1 AMR 26:1103 SC; *PP v. Ton Kah Pin [1993] 1 CLJ 83*), to interpret it "according to the intent of them that made it" (*Tan Song Mooi v. Too Miew Kim* [19941 3 AMR 35:1799) and if the words are clear, to give effect to them (*PP v. Tan Kah Pin* Case citing *R. v. Mansel Jones* [1889] 23 QBD 29; *Chor Phaik Usir v Farlim Properties Sdn Bhd* [1994] 3 AMR 41:2103, 2114). You cannot go beyond the expressed language of the legislation (*Mohamed Noor bin Othman & Ors v. Haji Mobamed Ismail* [1988] 3 MIJ 82). As far as possible a legislation should not be read to give it an effect such that it is a pointless piece of legislation (*Smith Kline & French Laboratories Ltd. v. Salim (Malaysia) Sdn Bhd* [1989] 2 MLJ 380, 382). With all due respect, neither construction of s. 105 put forth by both learned Counsel can be true. The words of the section are plain enough. The section is a deeming provision and it turns an employee of the Council, say, an enforcement officer, when he is carrying out his duties as such, into a member of the State Public Service though he is not one but nevertheless, he would not be entitled to the benefits, say for example, pension, which a member of the State Public Service would be entitled, nor subject to transfer to other local authorities unlike a member of the State Public Service who is liable to be transferred all over the state, if he is in fact not one. Why, it may be asked, was it necessary to have such a deeming provision and for which written law? I can think only of the now repealed Public Authorities Protection Ordinance (Cap. 111) of Sabah where s. 2(1) says:

> 2. (1) Where any action...is commenced against any person for any act done in pursuance or execution...of any public duty...the following provisions shall give effect:
>
> (a) The action....shall not lie or be instituted unless it is commenced within six months next after the act...
>
> ...

Without the deeming section, it would be arguable whether the enforcement officer, in the example given, was carrying out any public duty within the meaning of s. 2(1) of the Public Authorities Protection Ordinance (Cap. 111). With the deeming provision, the enforcement officer would certainly be regarded as a public officer and the acts he performed in connection with his duties would be an act in pursuance of a public duty within the meaning of s. 2(1) of the Public Authorities Protection Ordinance Cap. 111). What I have adverted to serves to illustrate the true meaning and purpose of a deeming provision. The provision of s. 105 is such a deeming provision and it does not turn someone into a member of the State Public Service to qualify for a post when in fact he is not one and neither does the provision stipulate that anyone who wants to an employee of the Council must first be a member of the State Public Service. Therefore, s. 105 cannot be relied on by the plaintiff as conferring on him the qualification, that of being a member of the State Public Service, when in fact he was not one so as to qualify to hold or to retain the post of Vice-President.

It remains to be answered whether the contract employing the plaintiff as Vice-President (1), who not at the relevant time a member of the State Public Service and when one Stephen Chin was already appointed Vice-President, illegal by virtue of clause 6 and 8 of the Instrument? Mr. John Sikayun had, among others, referred the Court to the decision of the High Court in *Coramas Sdn Bhd v Rakyat First Merchant Bankers Bhd & Anor*. [1992] 2 MLJ 603; [1992] 1 AMR 44:189 which decision was upheld by the Supreme Court and reported in [1994] 1 AMR 8:425 and *Chang Khiaw Bank Ltd v Hotel Rasa Sayang Sdn Bhd & Anor*.[1990] 1 MLJ 356. This question, I am of the view, is an issue, to borrow the words of the Supreme Court in *Coramas Sdn Bhd v Rakyat First Merchant Bankers Bhd & Anor*., p. 435, "purely and simply one of construction". For this purpose, I again reproduce clause 6 and 8 of the Instrument, *viz*:

6. The Council shall be composed of the President, Vice-President and not more than twenty-two members who shall be appointed by the Minister.

8. The President who shall be the Chairman of the Council, and the Vice-President shall be appointed by the Minister for such period being longer than one year as he may determine and such persons shall be members of the State Public Service

Learned Counsel had quoted extensively from *Chung Khiaw Bank, Ltd v. Hotel Rasa Sayang Sdn. Bhd. & Anor*. and submitted that in this case, as in the case just cited but without saying how they are the same, the contract employing the plaintiff is under s. 24 illegal and unenforceable against the Council. *Chung Khiaw Bank Ltd v Hotel Rasa Sayang Sdn Bhd & Anor*. is a case dealing with the consequence of s. 67 of the Companies Act, 1965 which expressly prohibited a company from giving financial assistance with the object of dealing in its own shares. This is what the relevant part of s. 67 says:

(1) Except as is otherwise expressly provided by this Act no company shall give...any financial assistance for the purpose of or in connection with a purchase or subscription made or to be made by any person of or for any shares in the company...

(2) ...

(3) If there is any contravention of this section, the company is, notwithstanding s. 369, not guilty of an offence but each officer who is in default shall be guilty of an offence against this Act. Penalty: imprisonment for two yews or ten thousand ringgit or both..

That case dealt with a contract the making of which is expressly prohibited by s. 67 of the Companies Act, 1965 and is of no assistance to the present case. There is no express provision in either the Instrument or the Ordinance that prohibits the appointment or a contract of employment of the plaintiff. It remains to be considered whether a prohibition can be implied (*Coramas Sdn Bhd v Rakyat First Merchant Bankers Bhd & Anor*. [1994] 1 AMR 8:425, 439.), a point which neither party addressed the Court. In any event I am of the view that such a prohibition cannot be implied for the following reason. Apart from the Instrument, the Council is clothed with all the authorities that are spelt out in the Ordinance and the Instrument, it will be recalled, is to be read as one and read subject to the Ordinance. Of relevance is s. 37 of the Ordinance which deals with the power of the Council to contract and it reads:

37. (1) An Authority may enter into any contract necessary or desirable for the discharge of any of its functions under this or any other Ordinance: Provided that an Authority shall not without the prior approval of the Minister enter into any contract of a value exceeding such amount as may be directed in respect of such Authority by the Minister.

(2) ....

(3) A person entering into a contract with an Authority shall not be bound to inquire whether the standing orders of the Authority, or, in their absence, the directions of the Minister, which apply to the contract have been complied with or, in the case of a contract to a value exceeding the amount for the time being directed under the proviso to subsection (1) whether the prior approval of the Minister has been obtained, and all contracts entered into by an Authority, if otherwise valid, shall have full force and effect notwithstanding that the directions have not been complied with or that the approval of the Minister has not been obtained.

It would appear that even in a case where a contract is entered without the Minister's prior approval, which is required, the contract is nevertheless not to be impugned on that ground. Clearly, far from prohibiting a contract that was entered into without complying with the Instrument or the Ordinance, such contract is expressly saved by s. 37(3) of the Ordinance.

I do not see how it can be implied that the appointment or contract of employment was prohibited by the Instrument or the Ordinance. It is even more untenable to imply such a prohibition if one reads s. 69 of the Ordinance which says:

Part VIII

Staff and Employees

69.(1) Every Authority shall appoint an executive officer and a treasurer, who may be the same person. Such appointment and the salary to be paid shall be approved by the Minister and no person so appointed shall be dismissed except with the approval of the Minister. The Authority may grant leave of absence to such officer or officers and in the event of absence from duty may appoint with the prior approval of the Minister another person or persons to act in such office and appoint another in his stead. Any person so appointed to act in such office or offices shall have all the powers and perform all the duties of such office under this Ordinance and any by-law made thereunder and any other duties as may be assigned to him by resolution of the Authority.

(2) Every Authority may employ either on a whole or partime basis such other officers, servants, labourers and other workers as may be required for the performance of its functions under this Ordinance. No appointment carrying a salary of more than such amount per month as the Minister may direct in respect of such Authority or on a scale which rises above such amount shall be made nor shall any person draw such salary without the approval of the Minister and appointments to and dismissals from such posts shall be subject to the approval of the Minister. For the purposes of this subsection "salary" shall include allowances and "appointments" shall include an acting or temporary appointment.

(3) Any Authority may subject to the approval of the Minister make a scheme or schemes for the establishment of a pension, superaannuation or provident fund or scheme for the provisions of pensions or other allowances on death, superanimation, resignation, retirement or discharge to persons who have been in the employment of such Authority.

(4) In the event of an Authority employing on secondment any person who is already entitled to benefits of any nature in his substantive employment or appointment, it shall be lawful for the Authority instead of or in addition to the emoluments payable to such person to pay in respect of such person such amounts as may be agreed by the Minister of Finance to ensure the continuation of such benefits.

Under the section just quoted the Council could employ the plaintiff since the work the plaintiff employed to undertake came within the numerous functions defined in s. 49 of the Ordinance. Given that the Council could enter into the contract either under s. 37 or s. 69 of the Ordinance, it is not permissible to imply in the Instrument a clause prohibiting the contract when there is no express provision. There is this point also that was not argued. The plaintiff was not be appointed "'Vice-President" but a "Vice-President (1)" and there is no such post mentioned in clause 8 of the Instrument. Therefore, when the contract refers to the post of "Vice-President (1)", it should be construed as referring to a post other than the "Vice-President" referred to in clause 8 of the Instrument. The appointment or contract for the "'Vice-President (1)" post can validly be made, as was done in this case, under either ss. 37 or 69 of the Ordinance and even under Regulation 1 of the Staff Regulations for Local Authority Staff, none which requires the plaintiff to be a member of the State Public Service. The contract employing the plaintiff is not tainted with any illegality since it was not prohibited by statute. Since there was already a Vice-President the contract employing the plaintiff must be for a post other than the Vice-President post of clause 6 of the Instrument; *a fortiori*, when the designation of the plaintiff was "Vice-President (1) (Special Functions/ Development/Public Relation)" which does not exist under clause 6 or 8 of the Instrument. The contract was not illegal as there was no statutory provision prohibiting the employment of the plaintiff by the Council.

No Contract with Council

As for issue (1), Mr. John Sikayun had earlier argued that there was no contract entered into by the Council with the plaintiff. Learned Counsel argued that there cannot be such a contract despite the letter of the Council informing the plaintiff of his appointment, despite the payment of salaries and the provision of the perks under the contract and despite the purported termination of the contract by the payment of one month's salary in lieu of notice because, argued learned Counsel,:

(1) there was no contract executed between the plaintiff and the Council; and

(2) the Minister concerned did not himself decide on the appointment of the plaintiff but acted mechanically when he merely followed the decision of the then Chief Minister;

As for the issue of whether there was a contract made between the plaintiff and the Council, this is what Mr. John Sikayun said in his written submission:

> Only the Minister of T & CP had the power of appointment. But it was not a power to contract. There is a distinction. To appoint is to exercise a Power or make a decision. It is miles away and nowhere near to the word 'CONTRACT' which is a deliberate agreement between competent parties, upon a legal consideration to do or abstain from doing some act. The plaintiff may be able to point to a appointment subject to whether the appointment is valid or not - but he is unable to point to a contract. Where is the contract. P6 a & b [agreed bundle] is not the contract. It may be a purported letter of appointment. Note item [b] - 'Contract with Sandakan Municipal Council' This shows that a contract was to be executed with SMC - but it was never executed. If P 6a & b can be held to be a contract how amazing is it that a contract can come into existence imposing terms on an intended party to the contact without that party having the opportunity to negotiate or discuss the terms. Clearly a backdoor and unlawful attempt to create a contract ...
>
> Offer and acceptance - absent
>
> There was never an offer made by P to the 1st defendant or *vice versa* and an acceptance in consequence. P may Point to the by CM but that is only valid if he can show that CM is valid, lawful agent of P. No evidence adduced in this regard by P's Counsel.
>
> Formalities - 1st defendant must execute contract with seal...

I will deal first with the question of the absence of the seal of the Council on the contract upon which the plaintiff sues which is raised in the submission which I just quoted. Mr. Jeyan Marimuttu did not advert to this point presumably because it was never pleaded by the Council. It is very clear to me that the lack of a seal on the contract was definitely not pleaded in the pleadings I have adverted to. Mr. John Sikayun had referred to *A.R. Wright & Son Ltd v. Romford Borough Council* [1957] 1 Q.B. 431 where it was held that a contract was unenforceable against a corporation unless it was under seal but it was in that case pleaded that the contract was not binding because it was not under seal. It is not pleaded in this case. The common law of England had since the passing of the Corporate Bodies' Contracts Act, 1960, changed with the result that corporations can enter into contracts with no more formality than that is required in the case of an individual. Is it the law in Malaysia that a contract made by a corporation must be under seal or else it becomes unenforceable? I am of the view that the common law position had been changed since the extension to Sabah of the Contracts Act, 1950, ('the Act") on 1 July 1974. A contract is only void or voidable, and as a result unenforceable, only in the events laid down in the Act, and the want of a seal is not one of those events. No formality is required for the creation of a contract under the Act. What the Act did not affect is stated in s. 10(2), *viz*:

a (2) Nothing herein contain shall affect any law by which any contract is required to be made in writing or in the presence of witnesses, or any law relating to the registration of documents.

Since the common law requirement of a seal for a contract by a corporation is not within the option of s. 10(2), the common law is therefore altered by the Act with the result that a seal is longer necessary for any contract by a corporation. Therefore, even conceding that the b issue was pleaded, the Council would still fail because, for the reasons I have stated, a seal is not required for the contract.

It will also be noticed in the submission of Mr. John Sikayun, *supra*, that he may be talking about the contract being subject to a formal contract to be executed but was not executed by the Council, which again, is not in issue because it is also not pleaded. Any way, the c short answer to that contention is that there was already affirmation of the contract when the Council allowed the plaintiff to work, when the Council paid the plaintiff his salaries and when the Council purported to terminate the contract with one month's salary in lieu of notice. Thus, the contract was already in existence and executed and it does not make any sense to talk about the contract coming into existence after a formal one had been drafted and executed. This leaves the issue raised or implied in the following submission, *viz*.: **"If P 6a & b can be** d **held to be a contract how amazing is it that a contract can come into existence imposing terms on an intended party to the contract without that party having the opportunity to negotiate or discuss the terms. Clearly a backdoor and unlawful attempt to create a contract..."** to see if the issue raised therein is pleaded. Again, I am of the view, it is not pleaded that the terms were imposed on them unilaterally and the alleged contract being a, to quote, whatever that means, "a backdoor and unlawful attempt to create a contract". In e any event it is just summation without any proven facts. It must not be forgotten that the evidence adduced show that the terms for the employment were discussed by the then Chief Minister with the plaintiff and it was reduced into writing in the of the said letter from the plaintiff dated the 17 January 1985. It was thereafter left to the State Secretary, the head of the administration responsible for the proper execution of any executive order, to see to the carrying out of the instruction of the then Chief Minister. If it was then thought improper or f illegal to appoint the plaintiff, one would expect the then State Secretary to say so but he did not. He also did not decide on the employment of the plaintiff and instead, referred the matter, by his letter dated 18 January 1985, to the Permanent Secretary of the then Ministry of Town and Country Planning for him to "consider, decide and act". Almost two weeks elapsed before a decision was conveyed by the letter of the said Permanent Secretary dated 1 February 1985 to the then President of the Sandakan Municipal Council. In the absence of g evidence to the contrary it can be assumed that all aspects, including the legality, pertaining to the employment must have been discussed. In fact the said letter of 1 February 1985 refers to a decision of the Minister concerned having been made after the matter was referred to his ministry on 18 January 1985. I have already concluded that there was nothing illegal about the employment as it can come within either s. 37 or s 69 of the Ordinance. The evidence cannot support the contention that the Minister was mechanical when making his h decision appointing the plaintiff. The evidence which I had adverted to show that the Minister had two weeks for deliberation before his decision was made known by his Permanent Secretary's said letter dated 1 February 1985. As I have said, the Minister must have deliberated on the matter and there is no evidence to show otherwise. If that is the case, how could he be branded as being, and this is implied in the other part of the written submission of learned Counsel, mechanical in his decision or bowing to the dictates of the i then Chief Minister. Therefore, even if the issue was pleaded, it would still fail.

Frustration was pleaded but was abandoned by the Council. That is no longer an issue.

Lawful Termination and Damages

Finally, it was contended by learned Counsel for the Council that the contract between the plaintiff and the Council was governed by Regulation 37(2) of the Staff Regulations for Local Authorities Sabah 1964 which allows the termination of the contract with one month's notice and that the contract was in fact so terminated. Consequently, the damages of the plaintiff should be limited to one month's salary. Mr. Jeyan Marimuttu submitted, and I agree, that the same Regulations also allows the Minister concerned to approve the appointment on terms other than set out in the said Regulations and he referred to Regulation 1(3) which reads:

> (3) in special cases the Minister may approve the appointment of a person to in one of the categories of posts mentioned in paragraph (1) on terms other than those set out in these Staff Regulations,

and the plaintiff was accordingly appointed on terms other than set out in the said Regulations which means the contract cannot be prematurely terminated. The posts referred therein included "any other category of post of similar or higher grade approved by the Minister (e.g. Treasurer, Assistant Executive Officer)" which would embrace the appointment or employment of the plaintiff as "Vice-President (1)". The Council therefore, also fail in this contention. If follows that the Council also fail in their submission that the damages is limited to one month's salary only. Since there was no argument from learned Counsel for the Council that the calculation of damages argued by learned Counsel for the plaintiff cannot be supported, I will accept that the figures are conceded.

In view of what I have decided, it is not necessary to consider the defence of the Government because Mr. Jeyan Marimuttu had conceded that if the plaintiff succeeds against the Council, he would fail against the Government. The plaintiff's claim against the Government is therefore dismissed with costs.

Conclusion

In the premises, I give judgment for the plaintiff for the sum of RM93,198 together with interest. I have not acceded to the prayer for pre-judgment interest because the plaintiff had not diligently prosecuted his claim and this I have adverted to at the outset of the judgment. No one should be rewarded for tardiness and procrastination. This action did not take even half a day to finish, excluding the time taken for the preparation of the written submission, which means this case could have been disposed off long ago if the rules of the Court had been invoked and properly employed taking into account the fact that the facts of this case were not in dispute. As for costs, the plaintiff is to recover the same against the Council on the basis of a Bullock Order. A Bullock Order cost is made because the Council had at one stage of the pleading alleged that the Minister concerned, and therefore the Government, was responsible for hiring and firing the plaintiff. That being the stance of the Council, it was not unreasonable for the plaintiff to have applied, obtained an order and thereafter joined the Government as a defendant. Hence, an award of costs against the Council on the basis of a Bullock Order.